



(916) 323-7715

May 9, 1984

This is in response to your April 12, 1984, letter wherein you inquired as to whether there should be a change in ownership of real property for purposes of property taxation where the following occurred:

In May of 1982, you sold a condominium under an Installment Land Contract (Contract), pursuant to which the vendees made a \$1,600.00 down payment, were to pay \$800.00 per month for 3 years, and thereupon were to refinance and pay the balance of the \$140,000.00 sales price and take title at the close of escrow. The sales price was inflated because of the small down payment.

After making the monthly payments for 5 months, the vendees defaulted and you were forced to foreclose, at which time the Contract was recorded. You then purchased the condominium from the Trustee under the Contract at public auction for \$100,000.00. However, the assessed value of the condominium (land and improvements) as of March 1, 1983, for the 1983-84 fiscal year was \$129,900, and taxes were computed upon that amount.

An installment land contract or real property sales contract is an agreement wherein one party agrees to convey title to real property to another party upon the satisfaction of specified conditions set forth in the contract and which does not require conveyance of title within one year from the date of formation of the contract (Civil Code Section 2985). Although such contracts are categorized as executory contracts to convey real property (Wong Ah Sure v. Ty Fook, 37 Cal. App. 465), as contrasted with executed contracts, such executory

May 9, 1984

contracts have been held to be conveyances or transfers of real property upon the ground that they effect a grant of the whole beneficial interest in the property (Jackson And Thomas v. Torrence, 83 Cal. 521, at 537):

"...Such a contract, if enforceable, has the effect of vesting the equitable estate in the vendee, leaving in the vendor the dry legal title. It is in effect a grant of the whole beneficial interest in the land,...."

In the case of the typical installment land contract or real property sales contract then, which this Contract appears to be, when equitable ownership is transferred to the vendee thereunder, the vendor retains bare legal title as a security interest in the property (2nd Whereas and Paragraph 5) and the vendee acquires equitable title to the property and, where the contract so provides, possession thereof as well (Paragraph 5). And upon complying with the contract, the vendee's equitable estate becomes absolute, and the vendee is entitled to receive the legal title (Paragraphs 3A and 11).

Against this background then, Revenue and Taxation Code Section 60 defines "change in ownership" to mean "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest". As evidenced, each of the three aspects of the definition of "change in ownership" existed in this instance:

1. There was a transfer of a present equitable interest in the property from you to the vendees upon the execution of the Contract, since a vendee acquires his equitable estate through the contract itself (Orange Cove Water Co. v. Sampson, 78 Cal. App. 334),
2. There was a transfer of the present beneficial use of the property at the same time (Paragraph 5), and
3. The value of the present equitable interest transferred was substantially equal to the value of the fee interest (more, according to your letter).

Accordingly, a change in ownership of the condominium occurred upon the execution of the Contract in May of 1982.

May 9, 1984

Another change in ownership occurred upon your subsequent purchase of the condominium from the Trustee under the Contract. Again, there was a transfer of a present interest in real property, including the beneficial use thereof, the value of which was substantially equal to the value of the fee interest. See also Property Tax Rule 462(g), Foreclosure, which provides, generally, that a change in ownership occurs upon foreclosure.

The fact that the Contract was not recorded until you were forced to foreclose, and the facts that it was your intent that title to the property would not transfer unless the vendees purchased the condominium through escrow and there was no escrow when the Contract was executed in May of 1982 are not determinative. Recordation is merely publication of the fact that a change in ownership has occurred, and there are many instances such as this in which changes in ownership occur but recordation is delayed or even avoided. Additionally, as indicated above, Section 60 requires only a transfer of a present interest in real property, not the transfer of legal title thereto, and since the vendee acquires his equitable estate through the Contract itself, there is no need for escrow or consideration thereof.

As to the assessed value of the condominium, the Assessor apparently agreed that the \$140,000.00 price was inflated, as evidenced by his value for the 1983-84 fiscal year of \$129,900. The Assessor was not bound to assess the condominium at \$100,000.00, the price for which you purchased it, however, since he could well have evidence that its value was greater than any amount a successful bid at a foreclosure sale might bring. In this regard, Revenue and Taxation Code Section 402.5 authorizes the valuing of property by comparison to comparable sales of other properties, and per Property Tax Rule 4, The Comparative Sales Approach to Value, such is the preferred method of valuation. Presumably, the Assessor proceeded to value the condominium pursuant to the Section and the Rule.

Finally, Revenue and Taxation Code Sections 1601 et seq. pertain to application for reduction in assessment. Revenue and Taxation Code Section 80(a)(3) permits such an application to be filed during the filing period for the year in which an assessment is placed on the roll or in any of the three succeeding years. Where no application is filed for the year

May 9, 1984

in which the assessment is placed on the roll, but an application is filed in one of the next three years, Section 80 (a) (4) provides that any reduction in value as a result thereof will apply only to that year and to subsequent years. Thus, if you did not file such an application for the 1983-84 fiscal year, and if you have evidence supporting a value of less than \$129,900, you could still discuss the assessment with the Assessor's Office and/or file an application for the 1984-85 fiscal year.

Very truly yours,

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Tax Counsel

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